



COMMUNITY ALLIANCE for RESPONSIBLE  
ENVIRONMENTAL STEWARDSHIP

**VIA U.S. MAIL AND ELECTRONIC MAIL**

February 27, 2009

Ms. Pamela Creedon  
Executive Officer  
Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: Request for schedule adjustment in General Order R5-2007-0035 in response to current economic crisis

Dear Ms. Creedon:

On behalf of the Community Alliance for Responsible Environmental Stewardship ("CARES"), we respectfully request that the Central Valley Regional Water Quality Control Board ("Regional Board" or "Board") consider a schedule modification in General Order R5-2007-0035 ("General Order" or "Order") as described in detail below. Our coalition members hope this item may be considered at the April 23-24, 2009 meeting of the Regional Board, and that the Board acts to modify the schedule at that time. As you know, CARES is a coalition of all of California's dairy producer and processor associations, including the state's largest dairy producer trade associations (*Western United Dairymen, California Dairy Campaign* and *Milk Producers Council*) and the largest milk processing companies and farmer-owned cooperatives (including *California Dairies, Inc., Dairy Farmers of America-California* and *Land O' Lakes*). Formed in 2001, CARES is dedicated to promoting a balance of economic and environmental sustainability for California dairies.

**Current program background and overview**

As you and your staff are aware, the General Order adopted in May 2007 imposes significant new environmental performance requirements on existing dairies in the Central Valley. Because of the complexity and degree of difficulty inherent in the Order, the Regional Board wisely adopted a staged process, phasing in the requirements over approximately a five-year period. During that time, the General Order requires dairy producers, via this stepwise process, to engage in a series of tasks that constitute a full environmental performance analysis of the dairy facility. This is coupled with developing and implementing facility improvement plans to undertake structural improvements as

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needed. The General Order also requires all those regulated by it to adopt improved nutrient management and waste management practices, perform routine inspections, environmental sampling, testing and record-keeping. Much of this is characterized and summarized in reports that are submitted annually to the Regional Board. Verification of compliance is performed by Regional Board staff through auditing of submitted reports and on-site routine inspections.

While this has posed significant burdens on dairy families, from the beginning, our coalition has strongly supported full compliance with the General Order by all dairy producers. This is because we recognize and agree with the long-term goals behind the General Order -- to protect the valuable water resources that all Californians depend upon. Our members have demonstrated cooperation at every step, meeting regularly with your staff over the past two years to identify educational needs and deliver compliance workshops to dairy producers across the Central Valley at regular intervals. In addition, we have worked with your staff on an ongoing basis to identify and address compliance-related issues as they arise. Largely because of this, compliance with the General Order has so far been excellent by all accounts. Because the importance of water quality protection remains more critical than ever, our coalition members will continue to support your efforts to fully implement the General Order.

#### **Costs of compliance**

At the May 2007 adoption of the General Order, Regional Board staff estimated that costs of compliance would average \$30,000 to \$50,000 per year, per dairy, not including major infrastructure changes if needed to reach compliance, and not including certain "up-front" costs related to initial engineering assessments, etc. Experience suggests that the compliance costs estimates your staff reported in 2007 were in fact reasonably accurate, and while these costs are significant, so far, most dairies have been able to absorb them.

However, the dairy industry has not been sheltered from the rapid and critical downturn in the past few months or the widespread national and global economic crisis. We are aware that virtually everyone the Regional Board regulates currently faces economic challenges and so it will not come as a surprise that the dairy industry faces these same challenges.

In fact, the current challenges to Central Valley dairy producers are especially critical and severe. The poor economic climate has reduced international demand for U.S. dairy products, even as demand has also waned domestically; this has caused milk prices to drop to historically low levels. At the same time, costs of production, especially the costs related to cattle feed, remain at historic high levels:

- Average cost of production for 100 pounds of milk in 2008 was 28 percent higher than 2006, and nearly 43 percent higher than in 1994.<sup>1</sup>
- Average milk prices rose 15.3 percent from 2004 to 2008 – not keeping pace with production costs.<sup>2</sup>
- Milk prices dropped precipitously in recent weeks, with the minimum price paid to producers dropping from \$1.50 per gallon to 97 cents on Feb. 1, or nearly 35 percent, one of the largest single-month drops in recent years. Meanwhile, production costs have actually continued to rise from last year's levels.

**Falling prices, coupled with larger costs, pose challenges to the ability of many dairies to survive and stay in business.** It has been well documented that many Central Valley dairies are currently liquidating their assets, including selling off cows, in hopes of achieving emergency cost reductions and realizing short term cash flow to stem significant ongoing financial losses and in many cases, in hopes of avoiding imminent business failure.<sup>3</sup>

While the General Order did not cause the economic crisis, the next stage of its implementation could actually cause the dairy crisis to worsen. By July 1, the General Order requires all producers to prepare and submit a Waste Management Plan ("WMP") that "must be prepared by, or under the responsible charge of, and certified by a civil engineer who is registered pursuant to California law ..." (General Order Attachment B, page B-1). As such, the dairy operator cannot complete this work on his or her own, but must contract it out to a professional engineer or equivalent.

CARES members have surveyed the various engineering firms providing this service as well as dairy producers and other dairy professionals and are finding one-time costs for the engineering reports ranging from \$10,000 to \$30,000 each. Many dairies, especially smaller dairies, are likely to have to borrow money to finance the creation of the reports, at the same time that their credit lines are being stretched (if credit is even available) to cover operating costs. It should be noted that because engineering costs do not vary proportionately with herd size, the cost of preparing engineered WMPs actually falls disproportionately (on a per-cow or gallon-of-milk-produced basis) on smaller dairies.

#### **The General Order implementation schedule for the WMP**

When the Regional Board adopted the General Order in May 2007, many stakeholders, including CARES and its members, commented about the difficulty of fully foreseeing and addressing in advance of adoption the many the practical, logistical and economic challenges that would develop as the staged implementation continued. For this reason, staff members and Regional Board members repeatedly assured stakeholders that while it was necessary to adopt the General Order and begin implementation, it might also be

<sup>1</sup> California Department of Food and Agriculture; cost of production was \$12.75 per hundredweight in 2004, \$14.17 in 2006 and \$18.19 through the third quarter of 2008, the most recent data available.

<sup>2</sup> Source: California Department of Food and Agriculture.

<sup>3</sup> "Dairy cows head for slaughter as milk prices sour," Tracie Cone, the Associated Press, Feb. 16, 2009, [http://www.google.com/hostednews/ap/article/ALeqM5iYU\\_1F-P1PoGikJGfDG7NPd6EmoAD96CJf00](http://www.google.com/hostednews/ap/article/ALeqM5iYU_1F-P1PoGikJGfDG7NPd6EmoAD96CJf00)

necessary to revisit portions of the General Order in the future; if so, modifications would be considered and adopted if a need for them was demonstrated. Indeed, the General Order itself contains a finding (No. 38) "that some revisions to this Order may be necessary in the future in order to address issues that are not presently foreseen."

CARES coalition members believe the Regional Board understands the gravity of the present economic downturn and the strong practical and economic rationale for the Regional Board to modify the implementation schedule. The implementation schedule in the General Order (Table 1, pps. 27-28) requires the engineered WMP to be submitted to the Regional Board no later than July 2009. While the WMP itself is an engineering report and does not constitute actual structural improvements to dairies that may need them, it can be seen as a roadmap to those improvements, as it outlines exactly what needs to be done. Therefore, the implementation schedule also sets a second staged deadline, for completion of the actual improvements, in July 2011, thereby allowing two years post submittal of the WMP to complete and certify the necessary infrastructure improvements.

#### **Proposal for targeted relief via a schedule modification**

To provide temporary economic relief through the current crisis, CARES recommends that the Regional Board adopt a modification of the schedule in Table 1 of the General Order to allow submittal of the WMP in July 2010 instead of July 2009<sup>4</sup>.

Importantly, the actual improvements called for in WMP would still need to be completed by July 2011. Therefore, the effect of advancing the deadline for report submittal one year would only be to create additional time and flexibility in preparing the WMP itself. However, that would come at the cost of less time on the back end to complete the actual improvements. It is CARES' hope that this will cause the costs to be transferred forward in time when the economic climate has begun to recover, and access to credit to pay for engineers and improvements has improved. Actual infrastructure improvements would remain on schedule under this plan. Additionally, dairy operators who are financially able would still be allowed to submit WMPs earlier than July 2010 if they desire to get started with implementing infrastructure improvements earlier in order to meet the ultimate deadline in 2011. CARES will work with its members to ensure that dairy operators fully understand the pros and cons associated with submitting the WMP in 2010 versus 2009 and encourage those who can to take the opportunity to provide the information earlier.

In addition to the above, all other parts of the General Order implementation would of course continue on schedule. As you are well aware, the General Order contains many, many requirements beyond the WMP. Implementation of the nutrient management planning components, which constitute arguably the most important functions of the General Order, would continue on schedule. Environmental and nutrient sampling,

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<sup>4</sup> For clarity, the requested schedule modification applies to the Waste Management Plan with Retrofitting Plan/Schedule and all contents of that submittal as described Row 4 of Table 1 beginning on page 27 of the Order and continuing on page 28 of the order.

annual reporting and record-keeping, and inspections would continue as outlined in the General Order.

**Summary**

Central Valley dairy producers are in the heart of a historic economic crisis and have made good faith efforts to comply with the new regulations. The Regional Board has authority and a sensible, solid rationale for providing temporary and targeted relief during this crisis. Doing so will not change or reduce the environmental effectiveness of the regulations in any way. CARES therefore respectfully requests that your staff recommend a Regional Board action to modify the implementation schedule as described here.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J.P. Cativiela', with a stylized, cursive script.

J.P. Cativiela  
CARES Program Coordinator

C: Karl Longley, Regional Board Chairman  
William Van Dam, CARES Chairman

Enclosures